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## **TESTIMONY OF KEITH L. ROGERS TO U.S. DEPARTMENT OF AGRICULTURE**

At Tobacco Transition Program Public Meeting  
November 22, 2004

I am Keith L. Rogers, Executive Director of the Governor's Office of Agricultural Policy for Kentucky Governor Ernie Fletcher. I am here today representing The Kentucky Tobacco Settlement Trust Corporation of which I serve as President and Governor Fletcher serves as Chairman of the Board. More importantly, I am representing over 160,000 Kentucky tobacco growers and quota owners who are anticipating the receipt of a Phase II payment at the end of this year. Thank you for holding this hearing today and providing the opportunity for this testimony.

It is the position of the Kentucky Settlement Trust Corporation, following several conversations with members of the Kentucky delegation and other Grower States, that the Fair and Equitable Tobacco Reform Act (hereafter "FETRA") was created to assist the tobacco farmers in the United States. The intention of Congress was to provide the tobacco farm families with a financial compensation plan in return for the loss of the tobacco quota system. The language clearly stated that FETRA is to begin with the 2005 Tobacco Crop Year which has not yet begun.

As FETRA commences with crop year 2005, the assessment dates and collection dates are merely technical dates. FETRA states that assessments shall be imposed quarterly during fiscal years 2005 through 2014, however it clearly states the collection date for the assessments is at the end of each calendar year quarter of 2005 through 2014. Furthermore, the Secretary is instructed in FETRA to ensure that the final assessment due under the collection language be collected not later than September 30, 2014. This further indicates Congress's intend for the collection of assessments to follow one quarter behind the imposed assessment quarter.

Furthermore, Congress intended that the funds paid into the yet to be created Tobacco Trust Fund (TTF) be made in an accurate and efficient manner with sufficient appellate procedures for the companies. The appellate process is imperative, particularly if the assessments are estimated. FETRA does not plan for estimated payments, the Act has a built in procedure with quarterly perspective payments due only after the TTF actually incurs expenses and/or enters into contracts with growers and quota owners. Based on the intent of Congress as expressed in FETRA, USDA should establish procedures wherein the collection of assessments will begin no earlier than March 31, 2005.

The primary concern of this hearing for Kentucky tobacco growers and quota owners are the Phase II payments for 2004. In 2003, 159,618 Kentucky tobacco growers and quota owners received over \$127 million. The Kentucky Tobacco Settlement Trust Corporation has completed the application process for the 2004 Phase II payments and 161,543 Kentucky tobacco growers and quota owners are expecting to receive over \$124 million at the end of 2004. These individuals and farm families rely heavily on annual Phase II distributions from the Trust for their financial and tax planning, including their mortgage payments, accounts payable, college

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tuition and operating loan payments for this 2004 crop year. The tobacco companies are currently seeking a refund of 2004 Phase II payments in the North Carolina court of jurisdiction, arguing that the enactment of FETRA relieves them of their obligation under the Trust agreement entered in 1999. They claim that FETRA allows them to offset their Phase II payments because it was signed into law in 2004.

The Kentucky Trust has heard from our Congressional delegation which solidified our understanding of Congress' intention to assist the agricultural community. Additionally, the Attorney Generals of Alabama, Kentucky, Ohio, Pennsylvania and West Virginia sent each member of the H.R. 4520 Conference Committee a letter outlining the importance of Phase II payments to review while considering the tobacco buyout. Congress was intimately aware of the provisions of Phase II prior to the enactment of FETRA and made every effort to ensure that the 2004 Phase II payments would be made on schedule to the tobacco growers. This is clearly evident by FETRA's continual reference to fiscal year, calendar year and crop year 2005. A seamless transition from Phase II payments to FETRA payments is an absolute necessity for our agricultural communities, particularly in Kentucky.

Therefore, we request that the USDA clearly state its intention to begin FETRA collection of assessments in 2005 as intended by Congress. If this does not occur, over \$440 million in Phase II payments scheduled to be distributed in five weeks are threatened, leaving thousands of farmers at risk of bankruptcy before the buyout payments are made.

Again, thank you for the opportunity to address this hearing.